

July 23, 2020

N.M. Taxation and Revenue Department
Director of Tax Policy
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Dear Tax Policy Director,

We write to express our support for the Motor Vehicle Division's proposed repeal of Section 18.19.5.17 NMAC—Fingerprint and Criminal History Screening—and Section 18.19.5.16 NMAC—Proof of New Mexico Residency. Our organization was a party to the lawsuit *Coss et al. v. Monforte et al.*, D-101-CV-2018-00302, which was settled and dismissed by the state district court late last year following the approval and implementation of numerous amendments to the state's Motor Vehicle Code. However, a remaining aspect to the case was the implementation of these regulations, which were delayed because of administrative issues, the global pandemic and the subsequent stay-at-home orders, but are now being submitted for final approval.

Proof of Residency & Fingerprinting

We support the Department's proposal to repeal in its entirety Section 18.19.5.16 NMAC and instead delineate acceptable documents for proof of New Mexico residency in Section 18.19.5.15 (C) NMAC. Likewise, we support the full repeal of Section 18.19.5.17 NMAC—Fingerprint and Criminal History Screening—which previously created numerous hardships for many New Mexicans and moved New Mexico away from the policy goal of wide access to driver's licenses and ID cards. With the full repeal, New Mexico is again treating all New Mexicans equally within its credential scheme.

Standard license “not acceptable for federal purposes”

We do, however, have a suggestion to improve the clarity of the proposed rules. Both the heading of the proposed Section 18.19.5.15 and the text of Subsection A therein of the draft rules refer to the standard driver's license and standard ID card as being "not acceptable for federal purposes." The quoted phrase is holdover language from the current regulation, and should be deleted for various reasons, including because it has

been made redundant by the latest statutory changes and its continued inclusion within the regulations will likely perpetuate further confusion in the application of the law.

The phrase "not acceptable for federal purposes" has become superfluous because its previous meaning is now embodied in the new statutory definitions of the terms "standard driver's license" and "standard identification card." Both terms are now defined in the statute—and would also be defined in the revised regulations—as a license or ID card that "is not guaranteed to be accepted for official federal purposes" (§§66-1-4.16(M) and (N) NMSA 1978; *see* proposed new §18.19.5.7(C)(7) and (8) NMAC). Given those definitions, there is no longer any need to accompany references to a standard license or a standard ID card with any additional language regarding their acceptability or non-acceptability for federal purposes.

More importantly, the language "not acceptable for federal purposes" seems to imply the Department has the authority to determine what is and is not "acceptable" for federal purposes as dictated by the REAL ID Act of 2005 when it simply does not. Neither the Department nor the state government generally has the authority to determine what kind of credentials will be "acceptable for federal purposes," something which only the federal government can determine.

For a number of years and prior to the current administration, the Motor Vehicle Division through its laws and practices and the federal government's constant changing of its deadlines confused many New Mexicans and members of the media as to the requirements of the federal law. The previous administration through deception and misinformation on the federal REAL ID Act of 2005 caused unnecessary rushes not only at local MVD offices but also at post offices with applications for passports based on the mistaken belief a U.S. passport was required to board a domestic commercial flight. It is not hyperbolic to state full implementation of the federal law may never occur as it has been extended for more than 15 years. The most recent extension came this March and is again extended until October 1, 2021.

The current MVD staff is still correcting these misunderstandings within the community and with members of the media. The hardships and the misapplication of the law created by the previous administration's actions required the filing of the aforementioned lawsuit to halt and correct their unlawful behavior. Fortunately, the

Department under this administration has taken the stance not only to adhere and improve the law, but also to work in a collaborative fashion with outside partners. When government works hand-in-hand with the most-impacted residents, the policy outcomes are improved for all state residents.

Lastly, the proposed language is not only imprecise but is also currently incorrect. In fact, at least some federal agencies, including most prominently the Transportation Security Administration or TSA screeners at the Albuquerque airport, have long accepted as a valid form of ID both the former “driving authorization card” and the current standard driver's license, neither of which was actually intended by the state to be accepted for these purposes. However, if the Department views a reference to the federal Real ID Act of 2005 as necessary, we would propose the Department use the actual statutory language of “not guaranteed to be accepted for official federal purposes” as a potential option.

In sum, we support the proposed repeal of Sections 18.19.5.16 and 18.19.5.17 NMAC, and we also suggest deleting the words "that is not acceptable for federal purposes" from both the heading and the first subsection of Section 18.19.5.15 NMAC. We urge the adoption of our suggestions.

Sincerely,
//s// Gabriela Ibañez Guzmán
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